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SENATE BILL 812

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE UNIFORM INTERSTATE  
ENFORCEMENT OF FOREIGN DOMESTIC VIOLENCE PROTECTION ORDERS ACT;  
PERMITTING REGISTRATION OF FOREIGN DOMESTIC VIOLENCE PROTECTION  
ORDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 9 of this act may be cited as the "Uniform Interstate  
Enforcement of Domestic Violence Protection Orders Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the  
Uniform Interstate Enforcement of Domestic Violence Protection  
Orders Act:

A. "foreign protection order" means a protection  
order issued by a tribunal of another state;

B. "issuing state" means the state whose tribunal

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1 issues a protection order;

2 C. "mutual foreign protection order" means a  
3 foreign protection order that includes provisions in favor of  
4 both the protected individual seeking enforcement of the order  
5 and the respondent;

6 D. "protected individual" means a person protected  
7 by a protection order;

8 E. "protection order" means an injunction or other  
9 order, issued by a tribunal under the domestic violence, family  
10 violence or antistalking laws of the issuing state, to prevent  
11 a person from engaging in violent or threatening acts against,  
12 harassment of, contact or communication with, or physical  
13 proximity to, another person;

14 F. "respondent" means the person against whom  
15 enforcement of a protection order is sought;

16 G. "state" means a state of the United States, the  
17 district of Columbia, Puerto Rico, the United States Virgin  
18 Islands or any territory or insular possession subject to the  
19 jurisdiction of the United States. "State" includes an Indian  
20 pueblo, tribe, nation or band that has jurisdiction to issue  
21 protection orders; and

22 H. "tribunal" means a court, agency or other entity  
23 authorized by law to issue or modify a protection order.

24 Section 3. [NEW MATERIAL] JUDICIAL ENFORCEMENT OF A  
25 FOREIGN PROTECTION ORDER. --

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1           A. A person may seek enforcement of a valid foreign  
2 protection order in a New Mexico tribunal. The tribunal shall  
3 enforce the terms of the order, including terms that provide  
4 relief that a New Mexico tribunal would lack power to provide  
5 but for this section. The tribunal shall enforce the order,  
6 whether the order was obtained by independent action or in  
7 another proceeding, if it is an order issued in response to a  
8 complaint, petition or motion filed by or on behalf of a person  
9 seeking protection. In a proceeding to enforce a foreign  
10 protection order, the tribunal shall follow New Mexico  
11 procedures for the enforcement of protection orders.

12           B. A New Mexico tribunal may not enforce a foreign  
13 protection order issued by a tribunal of a state that does not  
14 recognize the standing of a protected individual to seek  
15 enforcement of the order.

16           C. A New Mexico tribunal shall enforce the  
17 provisions of a valid foreign protection order governing  
18 custody and visitation, if the order was issued in accordance  
19 with the jurisdictional requirements governing the issuance of  
20 custody and visitation orders in the issuing state.

21           D. A foreign protection order is valid if it:  
22               (1) identifies the protected individual and  
23 the respondent;  
24               (2) is currently in effect;  
25               (3) was issued by a tribunal that had

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1 jurisdiction over the parties and subject matter under the law  
2 of the issuing state; and

3 (4) was issued after the respondent was given  
4 reasonable notice and had an opportunity to be heard before the  
5 tribunal issued the order or, in the case of an ex parte order,  
6 the respondent was given notice and has had or will have an  
7 opportunity to be heard within a reasonable time after the  
8 order was issued, in a manner consistent with the due process  
9 rights of the respondent.

10 E. A foreign protection order valid on its face is  
11 prima facie evidence of its validity.

12 F. Absence of any of the criteria for validity of a  
13 foreign protection order is an affirmative defense in an action  
14 seeking enforcement of the order.

15 G. A New Mexico tribunal may enforce provisions of  
16 a mutual foreign protection order that favors a respondent only  
17 if:

18 (1) the respondent filed a written pleading  
19 seeking a protection order from the tribunal of the issuing  
20 state; and

21 (2) the tribunal of the issuing state made  
22 specific findings in favor of the respondent.

23 Section 4. [NEW MATERIAL] NONJUDICIAL ENFORCEMENT OF  
24 FOREIGN PROTECTION ORDER. --

25 A. A New Mexico law enforcement officer, upon

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1 determining that there is probable cause to believe that a  
2 valid foreign protection order exists and that the order has  
3 been violated, shall enforce the order as if it were the order  
4 of a New Mexico tribunal. Presentation of a foreign protection  
5 order that identifies both the protected individual and the  
6 respondent and, on its face, is currently in effect constitutes  
7 probable cause to believe that a valid foreign protection order  
8 exists. For the purposes of this section, a protection order  
9 may be inscribed on a tangible medium or may have been stored  
10 in an electronic or other medium if it is retrievable in  
11 perceivable form. Presentation of a certified copy of a  
12 protection order is not required for enforcement.

13 B. If a foreign protection order is not presented,  
14 a New Mexico law enforcement officer may consider other  
15 information in determining whether there is probable cause to  
16 believe that a valid foreign protection order exists.

17 C. If a New Mexico law enforcement officer  
18 determines that an otherwise valid foreign protection order  
19 cannot be enforced because the respondent has not been notified  
20 or served with the order, the officer shall inform the  
21 respondent of the order, make a reasonable effort to serve the  
22 order upon the respondent and allow the respondent a reasonable  
23 opportunity to comply with the order before enforcing the  
24 order.

25 D. Registration or filing of a foreign protection

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1 order in New Mexico is not required for the enforcement of a  
2 valid foreign protection order pursuant to the Uniform  
3 Interstate Enforcement of Domestic Violence Protection Orders  
4 Act.

5 Section 5. [NEW MATERIAL] REGISTRATION OF FOREIGN  
6 PROTECTION ORDER. --

7 A. A person may register a foreign protection order  
8 in New Mexico. To register a foreign protection order, a  
9 person shall present to the clerk of the district court:

10 (1) a copy of the foreign protection order  
11 that has been certified by the issuing tribunal; and

12 (2) an affidavit by the protected individual  
13 stating that, to the best of the protected individual's  
14 knowledge, the foreign protection order is currently in effect.

15 B. The clerk shall register the foreign protection  
16 order in accordance with this section. After the foreign  
17 protection order is registered, the clerk shall furnish to the  
18 person registering the order a certified copy of the registered  
19 order and shall send a copy of the registered order to the  
20 local law enforcement agency.

21 C. A registered foreign protection order that is  
22 inaccurate or is not currently in effect must be corrected or  
23 removed from the tribunal's records in accordance with New  
24 Mexico law.

25 D. A foreign protection order registered under the

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1 Uniform Interstate Enforcement of Domestic Violence Protection  
2 Orders Act may be entered in any state or federal registry of  
3 protection orders, in accordance with applicable law.

4 E. A fee shall not be charged for the registration  
5 of a foreign protection order.

6 Section 6. [NEW MATERIAL] IMMUNITY. -- A New Mexico state  
7 or local agency or a law enforcement officer, prosecuting  
8 attorney, clerk of a court or any state or local governmental  
9 official acting in an official capacity is immune from civil  
10 and criminal liability for an act or omission arising out of  
11 the registration or enforcement of a foreign protection order  
12 or the detention or arrest of an alleged violator of a foreign  
13 protection order if the act or omission was done in good faith  
14 in an effort to comply with the Uniform Interstate Enforcement  
15 of Domestic Violence Protection Orders Act.

16 Section 7. [NEW MATERIAL] OTHER REMEDIES. -- A protected  
17 individual who pursues remedies under the Uniform Interstate  
18 Enforcement of Domestic Violence Protection Orders Act is not  
19 precluded from pursuing other legal or equitable remedies  
20 against the respondent.

21 Section 8. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND  
22 CONSTRUCTION. -- In applying and construing the Uniform  
23 Interstate Enforcement of Domestic Violence Protection Orders  
24 Act, consideration shall be given to the need to promote  
25 uniformity of the law with respect to its subject matter among

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1 the states that enact that act.

2 Section 9. [NEW MATERIAL] TRANSITIONAL PROVISION. -- The  
3 Uniform Interstate Enforcement of Domestic Violence Protection  
4 Orders Act applies to protection orders issued before July 1,  
5 2006 and to continuing actions for enforcement of foreign  
6 protection orders commenced before July 1, 2006. A request for  
7 enforcement of a foreign protection order made on or after July  
8 1, 2006 for violations of a foreign protection order occurring  
9 before July 1, 2006 is governed by the Uniform Interstate  
10 Enforcement of Domestic Violence Protection Orders Act.

11 Section 10. Section 40-13-6 NMSA 1978 (being Laws 1987,  
12 Chapter 286, Section 6, as amended) is amended to read:

13 "40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES  
14 NOT EXCLUSIVE. --

15 A. An order of protection granted under the Family  
16 Violence Protection Act shall be filed with the clerk of the  
17 court, and a copy shall be sent by the clerk to the local law  
18 enforcement agency. The order shall be personally served upon  
19 the respondent, unless ~~[he]~~ the respondent or ~~[his]~~ the  
20 respondent's attorney was present at the time the order was  
21 issued. The order shall be filed and served without cost to  
22 the petitioner.

23 B. An order of protection granted by the court  
24 involving custody or support shall be effective for a fixed  
25 period of time not to exceed six months. The order may be

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1 extended for good cause upon motion of the petitioner for an  
2 additional period of time not to exceed six months. Injunctive  
3 orders shall continue until modified or rescinded upon motion  
4 by either party or until the court approves a subsequent  
5 consent agreement entered into by the petitioner and the  
6 respondent.

7 C. A peace officer shall arrest without a warrant  
8 and take into custody a person whom the peace officer has  
9 probable cause to believe has violated an order pursuant to  
10 this section.

11 ~~[D. State courts shall give full faith and credit~~  
12 ~~to tribal court orders of protection and orders of protection~~  
13 ~~issued by courts of other states. A protection order issued by~~  
14 ~~a state or tribal court against one who has petitioned, filed a~~  
15 ~~complaint or otherwise filed a written pleading for protection~~  
16 ~~against abuse by a spouse or intimate partner is not entitled~~  
17 ~~to full faith and credit if:~~

18 ~~(1) no cross or counter petition, complaint or~~  
19 ~~other written pleading was filed seeking such a protection~~  
20 ~~order; or~~

21 ~~(2) a cross or counter petition has been filed~~  
22 ~~and the court did not make specific findings that each party~~  
23 ~~was entitled to such an order.~~

24 ~~E.]~~ D. A person convicted of violating an order of  
25 protection granted by a court under the Family Violence

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1 Protection Act is guilty of a misdemeanor and shall be  
2 sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a  
3 second or subsequent conviction, an offender shall be sentenced  
4 to a jail term of not less than seventy-two consecutive hours  
5 that shall not be suspended, deferred or taken under  
6 advisement.

7 ~~[F-]~~ E. In addition to any other punishment  
8 provided in the Family Violence Protection Act, the court shall  
9 order a person convicted to make full restitution to the party  
10 injured by the violation of an order of protection and order  
11 the person convicted to participate in and complete a program  
12 of professional counseling, at ~~[his]~~ the person's own expense,  
13 if possible.

14 ~~[G-]~~ F. In addition to charging the person with  
15 violating an order of protection, a peace officer shall file  
16 all other possible criminal charges arising from an incident of  
17 domestic abuse when probable cause exists.

18 ~~[H-]~~ G. The remedies provided in the Family  
19 Violence Protection Act are in addition to any other civil or  
20 criminal remedy available to the petitioner. "

21 Section 11. SEVERABILITY. --If any part or application of  
22 the Uniform Interstate Enforcement of Domestic Violence  
23 Protection Orders Act is held invalid, the remainder or its  
24 application to other situations or persons shall not be  
25 affected.

